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IN THE

Supreme Court of the United States

OCTOBER TERM 1970

1362

No. 30,248

WOODROW W. CHABERT, PAUL A. CLEMENT, ET AL,

Plaintiffs-Appellants

versus

CITY OF WESTWEGO, ET AL,

Defendants-Appellees

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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The petitioners Woodrow Chabert, Paul A. Clement and others similarly situated pray that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Fifth Circuit rendered in these proceedings on November 20, 1970.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit, as yet unreported, appears as Appendix A page

28. The opinion of Federal District Court for the Eastern District of Louisiana is unreported as appears as Appendix B page 30. The United States Court of Appeals for the Fifth Circuit affirmed the judgment of the District Court on the summary docket.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was rendered on November 20, 1970. See Appendix A. This petition for certiorari was filed less than 90 days from the date aforesaid. The jurisdiction of this Court is invoked under 28 USCA Sec. 1254.

QUESTIONS PRESENTED

The two plaintiffs and others similarly situated filed this suit seeking injunctive relief and requesting a three judge court. The issues presented are as follows:

(1) Whether the mayor is qualified and authorized to sit as judge of the Municipal Court of the City of Westwego while the State Constitution permits the election of a qualified lawyer-judge.

(2) Whether the election procedures of the City of Westwego are constitutionally permissible. The aldermen are elected at large; their election at large is contrary to the Louisiana Constitution and the Louisiana Revised Statutes.

(3) Whether the unlawful action of the City Marshal is constitutionally permissible.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment V

> "No person shall . . . be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. . ."

Constitution of the United States, Amendment VI

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Constitution of the United States, Amendment XIV

> ". . . nor shall any state deprive any person of life, liberty or property without due process of law. . ."

Louisiana Constitution Article 7, Sec. 51 (B)

> "(B) Jurisdiction of City Courts
>
> The legislature may pass laws also conferring civil jurisdiction of City Courts in cities where the combined population of the city and the ward or wards of the parish where situated is more than ten thousand inhabitants, but less than twenty thousand, concurrent with that of the District Court, where the amount in dispute, or the value of the movable property involved, does not exceed Five Hundred Dollars, exclusive of interest and attorney's fees. . . ."

RS 33: 382

"Each city shall be divided into four wards, as near equal in population as can be conveniently provided, the territory of which shall be contiguous. The boundaries of wards may be changed by ordinance passed by a vote of at least two-thirds of all the aldermen elected. When fixed by ordinance the boundaries of the ward shall not again be changed for a period of two years, except for the purpose of uniting thereto territory added to the city limits. No change in the boundary of a ward shall be made, however, less than one year before a municipal election. In case a city is not divided into wards before the first election under this Part, all the aldermen may be elected from the city at large.

"The mayor and board of aldermen of a town shall determine if the town is to be divided into wards; if divided, the whole of this Section shall apply. Where not divided the municipality shall be treated as constituting one ward within the provisions of this Part concerning the subject of registration and elections."

RS 33: 401

"Powers of mayor and aldermen; ordinances authorized.

"A. The mayor and board of aldermen of every municipality shall have the care, management, and control of the municipality and its property and finances. They shall have power: ----------

"(6) To make all police regulations necessary for the preservation of good order and the peace of the municipality; and to prevent injury to,

destruction of, or interference with public or private property.

"(31) To provide for the removal of officers and discharge of employees for misconduct or neglect of duty, subject to any applicable civil service law."

STATEMENT OF FACTS

The relevant facts presented in this petition are as follows:

The two petitioners Woodrow Chabert and Paul A. Clement are policemen in the City of Westwego. This is a class action on behalf of these two petitioners and others similarily situated in the City of Westwego.

One petitioner Paul A. Clement was suspended as a policeman by the Marshal of the City of Westwego. He presented his case to the Civil Service board of the City of Westwego. The Civil Service Board exonerated him and directed his return to duty as a policeman. The Marshal has refused to honor the ruling of the City Civil Service Review Board.

The other petitioner Woodrow Chabert was dismissed from duty for failure to bid the Marshal the time of day. He demanded a hearing by the City Civil Service Board and he also was exonerated. He was reinstated to duty but has been constantly harassed in official duties.

This suit is an outgrowth of the dissatisfaction of these two petitioners and others similarly situated. They are tax paying residents of the City of Westwego. As

per the stipulations on the trial of the rule to show cause Westwego has a population between 10,000 to 20,000 persons. However this population may exceed 20,000. At first inspection this suit appears as a political struggle between two factions. On closer evaluation, it discloses a power entente which engenders itself.

According to the Louisiana Constitution this city is entitled to a City Court with criminal jurisdiction over misdemeanors and civil jurisdiction over a controversy which does not exceed $500.00 exclusive of interest and attorney's fee. The present mayor's court is constitutionally and statutorially unpermissible. The provisions of law have not been implemented. Petitioners contend that this is an unconstitutional application of a constitutional law.

Under the Laws of Act of 1898 Codified as Louisiana Revised Statute RS 33: 382 which provides that:

". . . . each city shall be divided into four wards . . . ." the city has an option not to be divided into four wards, but the City of Westwego has never exercised this option. Further the statute provides that each ward shall elect an alderman and one alderman shall be elected at large. In the City of Westwego all of the aldermen are elected at large, even though the Board of Aldermen has not passed an ordinance not to be divided into four wards.

Petitioners filed suit in the Federal District Court for the Eastern District of Louisiana seeking injunctive relief. A three judge court was requested. A rule to show was granted before Lansing Mitchell. The matter was heard and then dismissed. Petitioners filed for a new

trial; a new trial was granted; reargument on a motion to dismiss resulted in another dismissal. The matter was appealed to the Fifth Circuit Court of Appeals: the appeal was dismissed on the summary docket.

ARGUMENT

Plaintiffs are seeking to have an injunction issued enjoining the municipal government as it is presently constituted for the following reasons. Under the Louisiana Constitution Article 7, Sec. 51, a city which has a population in excess of 10,000 is entitled to a city court with civil jurisdiction concurrent with that of the district court over the movables which do not exceed $500.00 exclusive of interest and attorney's fees, and shall also have criminal jurisdiction not extending beyond trials punishable by imprisonment at hard labor. Under the stipulations on the trial of the rule to show cause the City of Westwego had a population between 10,000 and 20,000 persons so that, therefore, the City of Westwego was entitled to a City Court as set forth under the Louisiana Constitution. The provisions of the Constitution are considered enabling provisions; it is stated that the legislature shall have the power to create such city courts. Plaintiffs showed through the testimony that the persons who appear before the Mayor's court do not receive a fair and impartial trial and that more specifically that the Mayor judicates several types of cases in which he has no jurisdictional authority.

Testimony of Woodrow Chabert, Appendix p. 37-40

"(12) Q. Sir, would you identify that piece of paper that you hold in your hand?

A. That is a Warrant of Arrest, City of Westwego, State of Louisiana — Parish of Jefferson, Mayor's Court.

Q. And what is that Warrant of Arrest for?

A. A Mynus Aizen, who lives in Daigle's Apartments in Marrero. It was issued on the 22nd of November '68.

Q. And what was it for? What was the Warrant issued for?

A. For failing to make payment of accident regular.

MR. STAMPS:

Your Honor, at this time, I would like to make this as Plaintiff—1.

THE COURT:

Are you going to introduce it into evidence?

MR. STAMPS:

Yes, Your Honor.

THE COURT:

Offer it.

MR. STAMPS:

Your Honor, at this time, I offer, introduce and file in evidence as Plaintiff—1, a copy of a Warrant of Arrest directed to a Mynus Aizen for, as it states, failing to make payments of accident regular.

THE COURT:

All right.

MR. STAMPS:

I mark it and introduce it into evidence.

MR. CURRAULT:

I would like to object to this, Your Honor. I would like to see the document.

THE COURT:

Show it to opposing counsel, Mr. Currault.

MR. CURRAULT:

I would like to object to that, Your Honor, it hasn't (14) been verified as a true document of the City of Westwego.

THE COURT:

Well, how did you get this?

THE WITNESS:

Well, could I go into detail?

THE COURT:

Yes.

THE WITNESS:

All right. To my knowledge, this man stole a vehicle in Marrero and he got into an accident

in the parish of Jefferson and he got into an accident on Highway 90, and this is also in the parish of Jefferson.

Now, we was instructed by the Marshal that if this man had a bill to pay every — I believe it's every 2 weeks or every week when he got paid. This man happened to fall down and he's sort of crippled, he's kind of not normal, he fell down at Avondale and hurt himself and we had to pick this man up when payments was due for Mr. Adams that lives on West Drive, which is good friends with the Marshall, and we had to pick him up several times, on several occasions we had to pick him up on this particular Warrant, so I had made (15) a copy of it. I had it in my possession.

THE COURT:

That warrant was given to you in your possession?

THE WITNESS:

It was in my possession, yes, Sir.

THE COURT:

The original of it?

THE WITNESS:

Yes, Sir."

Plaintiffs contend that the citizens of the City of Westwego are denied their constitutional rights under the due process and equal protection clauses of the 14th Amendment and more specifically due process under the

6th Amendment of the United States Constitution. Plaintiffs allege that the State of Louisiana has constitutional authority to remedy these problems but that the State refused to act. Said refusal to act constitutes a violation of the federal constitutional rights of these plaintiffs and other persons similarly situated.

This Court in *Pointer versus Texas* 380 US 400 85 Supreme Court 1065 and 13 Law Ed. 2d 923 held that the guarantees of the Sixth Amendment for the right of confrontation of witnesses and also to a fair and impartial trial should be enforced under the Fourteenth Amendment in state proceedings. In this specific case the Louisiana law provides for a city court, but through a non-application of this law the citizens of the City of Westwego are being denied same and are being denied rights under the Sixth Amendment. For a detailed evaluation of same reference is made to the testimony of Officer Chabert in the evidentiary hearing on the rule to show cause.

The second point is the refusal of the State of Louisiana to implement the provisions of the Lawrason Act, R.S. 33:382 which provides that:

". . . each city shall be divided into four wards. . . ."

Under cross-examination:

The testimony of Mayor Ernest J. Tassin under cross-examination is pertinent as follows: (Appendix p. 51-53)

"(64)

Q. Sir, can you explain to the Court why under

the provision of the Lawrason Act your city has not attempted to district into wards?

A. I can't answer that question directly, because I am not too familiar with it. This would probably have to come under the Committeemen that set up the elections for the city of Westwego.

Q. All right, Sir. Let me ask you another question: To your knowledge, has the city of Westwego ever passed an ordinance or a ruling that Westwego shall not be broken down into wards?

A. No, Sir, not to my knowledge, no Sir, not as long as I have been Mayor there since '65.

Q. Sir, have you ever received an opinion from the Attorney General or from your City Attorney in regards to (65) Revised Statutes 382 in regard to the creation of wards?

A. No, Sir, I haven't.

Q. Sir, if I were to read you that first part: 'Each city shall be divided into four wards,' would you consider — 'well would you explain to the Court why your city has not followed the mandate of that statute and divided it into wards?

A. I would say ignorance to the law.

Q. Ignorance of the law, Sir?

A. Yes, Sir, I'm not too familiar with it, I I haven't read that statute.

Q. All right, Sir. Now, I redirect to one question

you answered prior. Has your city ever passed an ordinance that Westwego shall not be broken down into wards?

A. Repeat that, please.

Q. Has your city or your council ever passed an ordinance or law that Westwego shall not be broken down into wards?

A. Since 1965, since I have been Mayor, no Sir, we haven't, maybe before. I couldn't answer that.

Q. Do you know if the city of Westwego ever had, Sir?

A. I don't believe. I was on the City Council prior to becoming Mayor and I don't remember any ordinances (66) as such."

Under cross-examination Mayor Tassin admitted that the aldermen in the city of Westwego are elected at large; that they do not follow the provisions of La. Revised Statutes R.S. 33:382 that to his knowledge the city of Westwego has never passed an ordinance exempting it from the provisions of La. R.S. 33:382.

Plaintiffs contend that the inaction of the State of Louisiana, in not requiring the city of Westwego to fulfill the statutory requirements in election procedures denies to them equal protection under the laws. The inaction of the state creates a federal constitutional issue which is now before this Honorable Court.

That under the cases of *Baker versus Car* 82 SCt. 691 7 L Ed. 2d 663 and more specifically *Reynolds versus*

Sims 84 S Ct. 1362, 377 US 533 the Supreme Court has determined the rule of law of "one man one vote." In the opinion of *Reynolds versus Sims* 377 US 533 84 S Ct. 1362 decided in 1964 the following has application to this case:

> "The Alabama constitution required the legislature be apportioned decennially; growth of Jefferson Parish Alabama from 1900 to 1960. Jefferson Parish was victim of discrimination."

This case is applicable to the present case because the Alabama constitution required the legislature be apportioned every ten years to account for changes between rural and urban population growths; however, the Alabama legislature from the year 1900 to 1960 refused to follow the Alabama constitutional mandates. In our case the constitution and statutes of Louisiana require that the city of Westwego be divided into wards and that each ward elect an alderman to represent that specific ward. The Louisiana legislature and the election governing bodies have done nothing to implement nor enforce these constitutional and statutory provisions.

Further in *Reynolds versus Sims* on Page 570 the following excerpts has application to this case:

> "Legislative inaction, coupled with the unavailability of any political judicial remedy, had resulted, with the passage of years in the perpetuated scheme becoming little more than an anchronism. Consistent failure by the Alabama legislature to comply with state constitutional requirements as to the frequency of reapportionment and the basis of legislative representation resulted in a minority stranglehold on the state legislature."

In this particular case Westwego was incorporated prior to 1898 under the provisions of the Lawrason Act which has been formulated and made law in LSA RS 33:321 through 481.

Further, under the case of *Dusch versus Davis* 387 US 112 18 Law Ed 2d 656 and 87 S Ct 1154 the provisions of *Reynolds versus Sims* has been applied to apportionment with municipal corporations.

In *Moody versus Flowers* 387 US 97 18 Law Ed 2d 643 and 87 S Ct 1544 it was held that a corporation apportionment suit did not require a three-judge court in that the charter was only local and did not have a state-wide application.

Dusch versus Davis concerned the election procedures of the five boroughs of Virginia Beach, Virginia and attacked the city's consolidation plans. The *Dusch versus Davis* case decided under the principles of *Reynolds versus Sims* seemingly give this court jurisdiction to entertain this case under its supervisory jurisdiction.

Plaintiffs allege that R.S. 33:423 defines the duties of the mayor and aldermen; sub-paragraph 6 states that the mayor and aldermen shall have the power as follows:

> "401. Powers of mayor and aldermen; ordinances authorized
>
> "A. The mayor and board of aldermen of every municipality shall have the care, management, and control of the munici-

pality and its property and finances. They shall have power: . . ."

"(6) To make all police regulations necessary for the preservation of good order and peach of the municipality; and to prevent injury to, destruction of, or interference with public or private property. . . ."

"(31) To provide for the removal of officers and discharge of employees for misconduct or neglect of duty, subject to any applicable civil service law. . . ."

The action of the Marshal of the city of Westwego in suspending Chabert and Clement, two police officers, supersedes his authority under the charters of said corporation. Even after these men had been cleared by the Civil Service Commission which inquire into their suspensions, the Marshal had refused to rehire Mr. Clement and has constantly harassed and impeded Officer Chabert in his official capacities as a police officer. This action to your petitioners violates all canons of due process and further the petitioners have no remedy after reinstatement is ordered by the Civil Service Commission and the Marshal refuses to allow them to function in their capacities as policemen.

Under the provisions of the Revised Statutes above mentioned, the actions of the Marshal of the City of Westwego in firing employees without the approval of the mayor and board of aldermen are in contravention of the Louisiana statutes and such conduct of the Marshal is flagrant disregard of the rights of citizens of Westwego to equal protection under the laws of the United States.

CONCLUSION

It is respectfully submitted that plaintiffs and other persons similarly situated in the City of Westwego are entitled to a city court as set forth under Article 7, Section 51 of the Louisiana State Constitution; they are entitled to have their city broken down into wards and entitled to elect an alderman to represent their ward on the city government as provided for under R.S. 33:382. Lastly, the Marshal of the City of Westwego should be prohibited from acting in derogation of their rights under R.S. 33:401, sub-paragraphs 6 and 31.

Plaintiffs contend that the judgment of the trial court should be reversed. That a three-judge court should be convened and that the government as presently constituted in the City of Westwego should be enjoined, then a new election shall be called in conformity with the provisions of Louisiana law.

Respectfully submitted,

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CERTIFICATE

I certify that a copy of the foregoing brief was served by mail on the attorney for the City of Westwego, Nestor L. Currault, Jr., at his address at 211 Derbigny Street, Gretna, La. 70053 this day of February, 1971.

ROBERT J. STAMPS

APPENDIX A

MINUTE ENTRY MITCHELL, J. JUNE 12, 1970

CIVIL ACTION NO. 70-266 SECTION F

WOODROW W. CHABERT, ET AL

versus

CITY OF WESTWEGO, ET AL

This matter came before the Court on a former date on plaintiffs' motion for a preliminary injunction. After considering the testimony, the arguments and briefs submitted by counsel, plaintiffs' petition for injunctive relief is denied.

Plaintiffs in this action are residents and taxpayers of the City of Westwego, Louisiana, who purport to sue on behalf of themselves and all who are similarly situated. Based upon their contention that the present method of electing aldermen, the existence of a mayor's court and failure of city officials to follow the state laws deprive them of their rights under the United States Constitution, plaintiffs now move to enjoin defendants from "proceeding with the municipal government and mayor's court as presently constituted".

Under Louisiana law, municipal corporations are divided into cities, towns and villages. Those having 5000 or more inhabitants are cities.[1]

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[1] La. R.S. 33:322.

We took judicial notice of the fact that the City of Westwego, Louisiana has a present population of more than 10,000 and less than 20,000 inhabitants.

In 1898 the Louisiana Legislature passed Act 136, commonly known as the Lawrason Act, which was a general legislative charter for all municipalities created after July 29, 1898. This statute set up the form of government for municipal corporations and defines their powers and duties.[2]

Under the present Louisiana law, there are three principal forms of municipal government — the Mayor-Board of Alderman Form, the Commission Plan and the Commission Manager Plan.[3]

Under the Alderman's form of government the elected officers consist of a mayor, a variable number of aldermen and a marshal. The distinguishing feature of the Aldermanic form is that aldermen are, as a rule, elected from various wards in the municipality rather than from the municipality as a whole, whereas the distinctive feature of the Commission Plan of Government is that the governing body is elected at large.[4]

The City of Westwego operates under the Aldermanic form and its municipal council is composed of the mayor and five aldermen who are elected at large for a term of four years. Each voter in the city is entitled to vote for five aldermen.

Plaintiffs contend that under the state law, Westwego

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2 R.S. 33:321 *et seq.*

3 *Chapman v. Bordelon*, 138 So.2d 1 (1962).

4 La. R.S. 33:501 *et seq.*

should be divided into wards, each of which would have one alderman elected and representing it and that the present method of electing these officials is constitutionally impermissive.

Louisiana law provides:

> "Each city shall be divided into four wards . . . In case a city is not divided into wards before the first election under this Part, all the aldermen may be elected from the city at large.
>
> "The mayor and board of aldermen of a town shall determine if the town is to be divided into wards; if divided, the whole of this Section shall apply. Where not divided, the municipality shall be treated as constituting one ward . . ."[5]

Westwego is approximately 50 years old; and the city has never been divided into wards, the aldermen having always been elected at large.[6]

Where the Board of Aldermen have not divided a town into wards, aldermen are to be elected at large.[7]

It should be noted here that there is no claim that any eligible citizen in Westwego is being denied the right to cast his vote in any election, nor do plaintiffs maintain that the state statute is unconstitutional. On the contrary, plaintiffs contend that the Louisiana law is *constitutional*; that Westwego must be divided into wards and defendants, by ignoring state law and employing the 'at large' system of electing aldermen, have denied plain-

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[5] La. R.S. 33:382.
[6] Testimony of Mayor Tassin.
[7] Op. Atty. Gen. 1944-46 p. 617.

tiffs the right of one-man, one-vote representation in their city government. Plaintiffs' contention is that by an 'at large' election they are being denied a representative form of government in that they cannot elect, by their own votes, an alderman from their particular district who would be favorable to their particular interests and needs.

The right protected by the one-man, one-vote rule is that whenever persons are selected by popular election to perform governmental functions, the Equal Protection Clause of the 14th Amendment requires that each qualified voter has a constitutional right to have his vote be given substantially equal weight to that of other voters.[8]

This principle not only applies to elected legislative bodies at state level but also to those elected at local levels, such as cities and towns.[9]

Concededly, the municipal council is the legislative body enacting laws affecting the City of Westwego.

Clearly, in the present system, each vote has exactly the same weight as any other.

The system of electing legislative bodies in an 'at large' system election is quite commonly used. There are advantages and disadvantages to the use of either the 'at large' system or the ward system of election. One supposedly ensures the election of an official who can com-

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[8] *Reynolds v. Sims*, 84 S. Ct. 1362 (1964).

[9] *Avery v. Midland County, Texas*, 88 S. Ct. 1114 (1968); *Kapral v. Jepson*, 271 FS 74 (D. Conn.-1967); *Ellis v. Mayor & City Council of Baltimore*, 352 F2d 123 (CA 4-1965); *Martmolich v. Dean*, 256 FS 612 (SD Miss.-1966).

mand wide support throughout the entire community and will be representative of and responsive to the needs of the community as a whole. His tenure depends upon the city-wide electorate and he must be vigilant to serve the interests of all the people in the city and not merely those of a particular ward. The other is designed to ensure representation of the particular interests of the separate geographical segments of the community. It may well be that one who would be elected under one system might not be able to win election under the other. There are many considerations which may justifiably lead a city to adopt one method of election rather than the other.

It has clearly been held that the at large system is not, per se, unconstitutional.[10]

The constitutional test under the Equal Protection Clause is whether there is an invidious discrimination.[11]

It might well be that in a particular circumstance, an at large system would be invalid. However, where the requirements of *Reynolds v. Sims* are met, apportionment schemes will constitute an invidious discrimination only if it can be shown that an 'at large' system under the circumstances of a particular case would operate to minimize or cancel out the voting strength of racial or political elements of the voting population.[12] That issue was not presented here. We find that the present method

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[10] *Fortsen v. Dorsey*, 85 S. Ct. 498 (1965); *Dusch v. Davis*, 87 S. Ct. 1554 (1967); *Owens v. School Comm. of Boston*, 304 FS 1327 (DC Mass.-1969).

[11] *Baker v. Carr*, 82 S. Ct. 691; *Reynolds v. Sims, supra.*

[12] *Burns v. Richardson*, 86 S. Ct. 1286 (1966); *Chavis v. Whitcomb*, 305 FS 1364 (SD Ind.-1969).

of electing aldermen in the City of Westwego does not violate plaintiffs' constitutional rights.

We have been shown no evidence of any discrimination, purposeful or otherwise, against any group of voters in the 'at large' election system in Westwego and, in the absence of such a showing, petitioners are not entitled to any relief on the basis of this claim.

Ernest J. Tassin is the duly elected mayor of Westwego and serves as Judge of the Mayor's Court. Petitioners contend that, because of Westwego's population, it is entitled to a city court with an elected judge.

Mayor's Courts were created by the Louisiana Legislature in 1898 by passage of the Lawrason Act.[13]

Although the Louisiana Constitution authorizes the legislature to abolish justice of the peace courts and create in their stead district courts in cities equal in population to that of Westwego,[14] that same section of the constitution authorizes Mayor's Courts.[15]

We have been unable to find any law, nor has any been cited which states that the abolition of justice of the peace courts abolishes Mayor's Courts as well.

The City of Westwego comprises a portion of the Fourth Ward for the Parish of Jefferson. Pursuant to

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[13] L.R.S. 33:441 Mayor's Court: . . . there shall be a Mayor's Court in the municipality, with jurisdiction over all violations of municipal ordinances. The mayor may try all breaches of the ordinances and impose fines or imprisonment, or both, provided for the infraction thereof.

[14] La. Const. Art. 7, Section 51B.

[15] La. Const. Art. 7, Section 51E.

constitutional authorization,[16] the state legislature enacted laws creating a parish court system in Jefferson Parish in lieu of a city courts system.[17]

There is no evidence in the record of this case which would cause us to find that because there exists a Mayor's Court in the City of Westwego, petitioners are being denied their rights under the laws and the Constitutions of the State of Louisiana or of the United States.

Jefferson Parish is composed of numerous municipalities, each having its own Mayor's Court which hears violations of City ordinances and the right to appeal an adverse decision therein is vested by the Louisiana Constitution.[18]

We conclude that the existence of a Mayor's Court in the City of Westwego does not deny petitioners equal protection of the laws or due process of law under the 14th amendment nor any constitutional rights guaranteed them under the 6th amendment to the United States Constitution.

Petitioners are policemen who were employed by the City of Westwego; defendant Sidney Guillot is the elected marshal.

Because of the large turnover of employees in the Police Department,[19] on July 1, 1965, the Mayor and the Board of Aldermen passed a resolution delegating to

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[16] La. Const. Art. 7, Sec. 51A.
[17] La. R.S. 13:2561.1 *et seq;* La. R.S. 13:2562.1 *et seq.*
[18] La. Const. Art. 7, Section 36.
[19] Testimony of Mayor Ernest Tassin.

Marshal Guillot the power, as Chief of Police, to suspend, hire and fire police officers.[20]

Pursuant to this authority, he suspended petitioner Chabert and fired petitioner Clement.

Under the remedies afforded by state law,[21] both petitioners were exonerated by the Civil Service Commission and although petitioner Chabert was reinstated, Marshal Guillot refused to rehire petitioner Clement.

There is presently pending in state court a writ of mandamus, brought by petitioner Clement, ordering the City to rehire him as a police officer.[22]

It is petitioners contention that the resolution of the Board of Aldermen[23] was an illegal delegation of power since, under the Lawrason Act, only the Mayor and the Board have the authority to hire and fire city employees,[24] and since the state, acting through the municipality, has failed to take any action to curb Marshal Guillot or to take any positive action to alleviate law enforcement problems existing in the muni pality, petitioners have been denied equal protection of the laws and due process as guaranteed them by the 14th Amendment to the United States Constitution.

The Mayor and the Board of Aldermen exercise the governmental powers of the municipality and are re-

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[20] Exhibit P-2.

[21] La. R.S. 33:2531 *et seq.*

[22] Docket No. 124,453; 24th Judicial Dist. Court for the Parish of Jefferson, State of Louisiana.

[23] Exhibit P-2.

[24] La. R.S. 33:321 *et seq.*

sponsible for policing the city.[25] The Marshal is the Chief of Police; his duties are defined neither by statute or jurisprudence but, because of the nature of his office, he is the chief law enforcement officer of the city and as such has supervision of the police department.[26]

Under the law the Mayor and the Board have the authority to prescribe the duties of all officers and employees of the City and the Marshal has the duty to perform all duties required of him by ordinance.[27]

We conclude that there is nothing in the Lawrason Act that precludes the Board of Aldermen from granting to the Chief of Police the power to supervise the police department, which necessarily entails the hiring and firing of the employees within the department.

No evidence was presented from which we could establish that petitioners' constitutional rights were violated. Adequate state remedies were available and petitioners have made use of them.

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[25] LSA R.S. 33:362; 33:401; 402(4) and 404.

[26] LSA R.S. 33:423; *Lentini v. City of Kenner*, 211 So.2d 311 (La. 1968).

[27] LSA 33:401(a)(30); 33:423.

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1970

No. 30,248
SUMMARY CALENDAR

D. C. DOCKET No. 70-266

WOODROW W. CHABERT, PAUL A. CLEMENT, ET AL.,
Plaintiffs-Appellants,

versus

CITY OF WESTWEGO, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

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Before GEWIN, GOLDBERG and DYER, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was taken under submission by the Court upon the record and briefs on file, pursuant to rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that plaintiffs-appellants pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

November 20, 1970

Issued As Mandate: December 14, 1970

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 30,248

SUMMARY CALENDAR*

WOODROW W. CHABERT, PAUL A. CLEMENT, ET AL.,

Plaintiffs-Appellants,

versus

CITY OF WESTWEGO, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

---

(November 20, 1970)

Before GEWIN, GOLDBERG and DYER, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

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* Rule 18, 5th Cir.; See Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York, et al., 5th Cir., 1970, ... F.2d ....., Part I [No. 29278, August 14, 1970].

[1] See NLRB v. Amalgamated Clothing Workers of America, 5 Cir. 1970. ..... F.2d ..... [No. 28680, August 12, 1970].